

Frelinghuysen

Speech, April 7, 1830

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SPEECH

OF THE

HON. THEODORE FRELINGHUYSEN,

SENATOR FROM NEW JERSEY,

DELIVERED IN THE SENATE OF THE UNITED STATES,
APRIL 7, 1830.*

THE Bill to provide for an exchange of Lands with the Indians residing in any of the States or Territories, and for their removal West of the river Mississippi, being under consideration, MR. FRELINGHUYSEN spoke as follows:—

MR. PRESIDENT: I propose an amendment to this bill, by the addition of two sections, in the form of provisos:—the first of which brings up to our consideration the nature of our public duties, in relation to the Indian Nations, and the second provides for the continuance of our future negotiations, by the mode of treaties, as in our past intercourse with them. The following is the amendment:

“ Provided always, That, until the said tribes or nations shall choose to remove, as by this act is contemplated, they shall be protected in their present possessions, and in the enjoyment of all their rights of territory and government, as heretofore exercised and enjoyed, from all interruptions and encroachments.

“ And provided also, That, before any removal shall take place of any of the said tribes or nations, and before any exchange or exchanges of land be made as aforesaid, the rights of any such tribes or nations in the premises shall be stipulated for, secured, and guaranteed, by treaty or treaties, as heretofore made.”

The first of these sections discloses the real object sought by this bill, seemingly composed of harmless clauses. It supposes that the design of the system of which the present bill forms but a part, is really to remove all the Indian tribes beyond the Mississippi, or, in case of their refusal, to subject them to state sovereignty and legislation. The Hon. Senator, (Mr. White,) who yesterday addressed the Senate, found it necessary so to consider it; and to anticipate and endeavor to meet all such objections to this course of policy, as he deemed worthy of a refutation.

* This speech was commenced on the 7th, and concluded on the 9th, a part of each day's session being consumed by the ordinary routine of business. The whole speech occupied the attention of the Senate about six hours. It is here much compressed.

Sir, I prefer that this latent object should be put fully before us, that we and the nation may look at it, and freely scrutinize it. At an early stage of the present administration, its views and opinions on the interesting subject of our Indian relations, were developed in language not to be mistaken. It is greatly to be regretted, Sir, that our present chief magistrate did not pursue the wise and prudent policy of his exalted predecessor, President Washington, who, at a time of collision and difficulty with these tribes, came before the Senate, and laid open to them, in propositions for their approbation, the various important subjects involved in our relations. The annexed extract from the Journals of the Senate illustrates the principles of Washington's administration. It follows:

“ Saturday, August 22, 1789.

“ The President of the United States came into the Senate, attended by general Knox, and laid before the Senate the following state of facts, with the questions thereto annexed, *for their advice and consent* ”

This was a most important document. It developed all the collisions that existed between the Indian tribes and the States; and referred to the consideration of the Senate certain leading principles of policy, which he thought it was wise to pursue.

These principles are imbodyed in seven distinct interrogatories; the fourth of which submits to the Senate “ whether the United States shall solemnly guaranty to the Creeks their remaining territory, and maintain the same, if necessary, *by a line of military posts?* ” This question “ was wholly answered in the affirmative ” by that body, and the blank (for an appropriation of necessary funds) was ordered to be filled at the discretion of the President of the United States. Again, on the 11th of August, 1790, President Washington sent a special message to the Senate by his Secretary, the subject matter of which he introduces by the following suggestion:

“ *Gentlemen of the Senate:*

“ Although the treaty with the Creeks may be regarded as the main foundation of the future peace and prosperity of the Southwestern frontier of the United States, yet, in order fully to effect so desirable an object, the treaties which have been entered into with the other tribes in that quarter, must be *faithfully performed* on our part.”

He then proceeds to remind the Senate, that, by the treaty with the Cherokees, in November, 1785, (the treaty of Hopewell,) “ the said Cherokees placed themselves under the protection of the United States, and had a boundary assigned them; ” that the white people settled on the frontiers had openly violated the said boundary by intruding on the Indian lands; that the United States in Congress assembled, on the first day of September, 1788, had, by their proclamation, forbidden all such unwarrantable intrusions, and enjoined the intruders to depart without loss of time; but that there were still some refractory intruders remaining. The President then distinctly announces his determination to exert the powers intrusted to him by the

constitution, in order to carry into faithful execution the treaty of Hopewell, unless a new boundary should be arranged with the Cherokees, embracing the intrusive settlement, and compensating the Cherokees for the cessions they shall make on the occasion. And, in view of the whole case, he requests the advice of the Senate, whether overtures shall be made to the Cherokees to arrange such new boundary, and concludes his communication with the following emphatical question: "3d. Shall the United States stipulate solemnly to guaranty the new boundary which may be arranged?"

It produced as pointed a response—for the Senate

"*Resolved*, In case a new or other boundary than that stipulated by the treaty of Hopewell, shall be concluded with the Cherokee Indians, that the Senate do advise and consent solemnly to guaranty the same."

A new boundary was arranged by a second treaty; the solemn guarantee was given to the Cherokees; and cogent, indeed, should be the causes that now lead us to think lightly of such sacred obligations.

I lament, Sir, that so bright and illustrious a precedent was not regarded, and that the President had not yielded to the safe guidance of such high example; and I deplore it the more, because it was concerning these very tribes, in the State of Georgia, that general Washington chose to confer with his constitutional advisers.

Instead of this just proceeding, the present administration has thought proper, without the slightest consultation with either House of Congress—without any opportunity for counsel or concert, discussion or deliberation, on the part of these co-ordinate branches of the government, to despatch the whole subject in a tone and style of decisive construction of our obligations, and of Indian rights. It would really seem, Sir, as if opinion was to be forestalled, and the door of inquiry shut forever upon these grave questions, so deeply implicating our national faith and honor.

We must firmly protest against this executive disposition of these high interests. The government cannot rescind, modify or explain away our public treaties. They are the supreme law of the land, so declared to be by the constitution. They bind the President and all other departments, rulers and people. And when their provisions shall be controverted—when their breach or fulfilment become subjects of investigation—here, Sir, and in the other hall of our legislation, are such momentous concerns to be debated and considered. That we may freely exercise these essential powers, and review the proclaimed opinions of the executive, I have submitted the first branch of the amendment. We possess the constitutional right to inquire wherefore it was, that, when some of these tribes appealed to the executive for protection, according to the terms of our treaties with them, they received the answer that the government of the United States could not interpose to arrest or prevent the legislation of the States over them. Sir, this was a harsh

measure, indeed, to faithful allies, that had so long reposed in confidence on a nation's faith. They had, in the darkest hour of trial, turned to the ægis which the most solemn pledges had provided for them, and were comforted by the conviction that it would continue to shed upon them a pure and untarnished beam of light and hope. Deep, indeed, must have been their despondency, when their political father assured them that their confidence would be presumptuous, and dissuaded them from all expectation of relief.

Mr. President: The instructions that have proceeded from the war department to the agents of Indian affairs have excited just and strong jealousies of the measures that are now recommended. They have prompted this amendment, in the hope that, by some public and decided expression of our disapprobation, the course of political management with these tribes may be changed, and our country saved from the dishonor of buying over the consent of corrupted chiefs to a traitorous surrender of their country.

I will read a part of these instructions. They are from the war department to generals Carroll and Coffee, of the date of 30th May, 1829:

"The past (remarks the Secretary, in respect to *Indian councils*) has demonstrated their utter aversion to this mode, whilst it has been made equally clear, that another mode promises greater success. In regard to the first, (that by councils,) the Indians have seen in the past, that it has been by the result of councils that the extent of their country has been from time to time diminished. They all comprehend this. Hence it is that those, who are interested in keeping them where they are, alarm their fears, and, by previous cautioning, induce them to reject all offers looking to this object. There is no doubt, however, but the mass of the people would be glad to emigrate; and there is as little doubt that they are kept from this exercise of their choice by their chiefs and other interested and influential men," &c. Again: "Nothing is more certain than that, if the chiefs and influential men could be brought into the measure, the rest would implicitly follow. It becomes, therefore, a matter of necessity, if the general government would benefit these people, *that it move upon them in the line of their own prejudices*, and, by the adoption of any proper means, break the power that is warring with their best interests. The question is, How can this be best done? Not, it is believed, for the reasons suggested, by means of a general council. There, they would be awakened to all the intimations which those who are opposed to their exchange of country might throw out; and the consequence would be—what it has been—a firm refusal to acquiesce. The best resort is believed to be that which is embraced in an appeal to the chiefs and influential men, *not together*, but apart, at their own houses, and, by a proper exposition of their real condition, rouse them to think of that; whilst offers to them, of extensive reservations in fee simple, *and other rewards*, would, it is hoped, result in obtaining their acquiescence."

Let us analyze this singular state paper. It does not relish the congregation of Indian councils. In these assemblies, they deliberate and weigh the policy of measures—they calculate the results of proposed improvements. These councils embody the

collected wisdom of the tribes. Their influence is of the authority of law. The people look to them for protection. They know that in the multitude of counsellors there is *safety*. Hence nations, far in advance of the Indians, always meet in council, when their great interests are to be promoted or defended. But these special agents are discouraged from hoping that the object can be obtained in this good old-fashioned way. The Indians are too *wise* to be caught when the net is spread so fully in sight. They are directed to avoid all *associations*; and, with the public purse in hand, to take the chiefs *alone*—to approach them individually, and at *home*—“*to meet them in the way of their prejudices.*” I admire the ingenious clothing of a most odious proposal.

A strong hint is suggested to try the effect of terror, and, by a proper exposition of their real condition, rouse them to think upon that, and to follow this up with “large offers to them of extensive reservations in fee simple, and other rewards.” The report made by one of these agents to the war department, dated September 2d, 1829, still further discloses the nature of the exigencies to which the Indians are to be subjected, to constrain their removal. The agent observes,

“The truth is, they (the Cherokees) rely with great confidence on a favorable report on the petition they have before Congress. *If that is rejected, and the laws of the States are enforced*, you will have no difficulty in obtaining an exchange of lands with them.”

It may be true, that, if we withdraw our protection, give them over to the high-handed, heart-breaking legislation of the States, and drive them to despair, when mercenary inducements fail to win them, force and terror may compel them. We shall have no difficulty, the agent assures the war department. Sir, there will be one difficulty, that should be deemed insurmountable. Such a process will disgrace us in the estimation of the whole civilized world. It will degrade us in our own eyes, and blot the page of our history with indelible dishonor.

Now, Sir, I have brought this measure before the Senate, and wait with intense anxiety to see the final disposition of it. Where is the man who can, in view of such policy, open the door, or afford the slightest facility, to the operation of influences, that we should blush with honest shame to have employed with our equals in the scale of civilization? It is not intended, Sir, to ascribe this policy exclusively to the present administration. Far from it. The truth is, we have long been gradually, and almost unconsciously, declining into these devious ways, and we shall inflict lasting injury upon our good name, unless we speedily abandon them.

I now proceed to the discussion of those principles which, in my humble judgment, fully and clearly sustain the claims of the Indians to all their political and civil rights, as by them asserted.

And here, Mr. President, I insist that, by immemorial possession, as the original tenants of the soil, they hold a title beyond and superior to that of the British crown and her colonies, and

to all adverse pretensions of our Confederation and subsequent Union. God, in his providence, planted these tribes on this western continent, for aught that we know, before Great Britain herself had a political existence. I believe, Sir, it is not now seriously denied that the Indians are men, endowed with kindred faculties and powers with ourselves; that they have a place in human sympathy, and are justly entitled to a share in the common bounties of a benignant Providence. And, with this conceded, I ask in what code of the law of nations, or by what process of abstract deduction, their rights have been extinguished.

Where is the decree or ordinance, that has stripped of their rights these early and first lords of the soil? Sir, no record of any such decree can be found. And I might triumphantly rest the hopes of these feeble fragments of once great nations upon this impregnable foundation. However mere human policy, or the law of power, or the tyrant's plea of expediency, may have found it convenient at any time to transgress the unchangeable principles of eternal justice, no argument can shake the political maxim—that where the Indian always *has been*, he enjoys an absolute right still *to be*, in the free exercise of his own modes of thought, government and conduct.

Mr. President: In the light of natural law, can a reason for a distinction exist from the mode of enjoying that which is my own? If I use land for hunting, may another take it because he needs it for agriculture? I am aware that some writers have, by a system of artificial reasoning, endeavored to justify, or rather excuse, the encroachments made upon Indian territory; and they denominate these abstractions the law of nations, and, in this ready way, the question is despatched. Sir, as we trace the sources of this law, we find its authority to depend either upon the conventions or common consent of nations. And when, permit me to inquire, were the Indian tribes ever consulted on the establishment of such a law? Whoever represented them or their interests in any congress of nations, to confer upon the public rules of intercourse, and the proper foundations of dominion and property? The plain matter of fact is, that all these partial doctrines have resulted from the selfish plans and pursuits of more enlightened nations; and it is not matter for any great wonder, that they should so largely partake of a mercenary and encroaching spirit in regard to the claims of the Indians.

It is however admitted, Sir, that when the increase of population and the wants of mankind, demand the cultivation of the earth, a duty rests upon the proprietors of large and uncultivated regions, to apply them to these useful purposes. But such appropriations are to be obtained by fair contract, and for reasonable compensation. It is, in such a case, the duty of the proprietor to sell—we may properly address his reason to induce him; but we cannot rightfully compel the cession of his lands, or take them by violence, if his consent be withheld.

It is with great satisfaction, that I am enabled, upon the best authority, to affirm, that this duty has been largely and generously met and fulfilled on the part of the aboriginal proprietors of this continent. Several years ago, official reports to Congress stated the amount of Indian grants to the United States to exceed 214 millions of acres. Yes, Sir, we have acquired, and now own, more land, as the fruits of their bounty, than we shall dispose of, at the present rate, to actual settlers in two hundred years. For, very recently, it has been ascertained on this floor, that our public sales average not more than about one million of acres annually. It greatly aggravates the wrong that is now meditated against these tribes, if we merely look at the rich and ample districts of their territories that either force or persuasion has incorporated into our public domains. As the tide of our population has rolled on, we have added purchase to purchase. The confiding Indian listened to our professions of friendship. We called him brother, and he believed us. Millions after millions he has yielded to our importunity, until we have acquired more than can be cultivated in centuries—and yet we crave more. We have crowded the tribes upon a few miserable acres on our southern frontier—it is all that is left to them of their once boundless forests—and still, like the horseleech, our insatiate cupidity cries, *Give, Give*.

Before I proceed to deduce collateral confirmations of this original title, from all our political intercourse and conventions with the Indian tribes, I beg leave to pause a moment, and view the case, as it lies beyond the treaties made with them; and aside also from all conflicting claims between the confederation and the colonies, and the Congress of the States.

Our ancestors found these people, far removed from the commotions of Europe, exercising all the rights, and enjoying the privileges, of free and independent sovereigns of this new world. They were not a wild and lawless horde of banditti; but lived under the restraints of government, patriarchal in its character, and energetic in its influence. They had chiefs, head men, and councils. The white men approached them as friends. They extended the olive branch, and, being then a feeble colony, and at the mercy of the native tenants of the soil, by presents and professions, propitiated their good will. The Indian yielded a slow, but substantial confidence; granted to the colonies an abiding place; and suffered them to grow up to man's estate beside him. He never raised the claim of elder title. As the white man's wants increased, he opened the hand of his bounty wider and wider. By and by, conditions are changed. His people melt away; his lands are constantly coveted; millions after millions are ceded. The Indian bears it all meekly; he complains, indeed, as well he may; but suffers on; and now he finds that this neighbor, whom his kindness had nourished, has spread an adverse title over the *last remains* of his patrimony, barely adequate to his wants, and turns upon him, and says: "Away! we cannot endure you so near us. These forests and rivers, these groves of your fathers, these firesides and

hunting grounds, are ours by the right of power, and the force of numbers."

Sir, let every treaty be blotted from our records, and in the judgment of natural and unchangeable truth and justice, I ask, Who is the injured, and who is the aggressor? Let conscience answer, and I fear not the result. Let those who please, denounce the public feeling on this subject, as the morbid excitement of a false humanity; but I return with the inquiry, whether I have not presented the case truly, with no feature of it overcharged or distorted. And, in view of it, who can help feeling? Do the obligations of justice change with the color of the skin? Is it one of the prerogatives of the white man, that he may disregard the dictates of moral principle, when an Indian shall be concerned? No, Mr. President. In that severe and impartial scrutiny, which futurity will cast over this subject, the righteous award will be, that those very causes which are now pleaded for the relaxation of the rules of equity, urged upon us not only a rigid execution of the highest justice, to the very letter, but claimed at our hands a generous and magnanimous policy.

Standing here then, on this unshaken basis, how is it possible that even a shadow of claim to soil or jurisdiction can be derived, by forming a collateral issue between the State of Georgia and the general government? Her complaint is made against the United States, for encroachments on her sovereignty. Sir, the Cherokees are no parties to this issue; they have no concern in this controversy. They hold by better title than either Georgia or the Union. They have nothing to do with State sovereignty, or United States sovereignty. They are above and beyond both. True, Sir, they have made treaties with both, but not to *acquire* title or jurisdiction; *these* they had *before*—ages before the evil hour, when their white brothers fled to them for an asylum. They treated to secure protection and guaranty for subsisting powers and privileges; and so far as those conventions raise obligations, they are willing to meet, and always have met, and faithfully performed them; and now expect from a great people the like fidelity to plighted covenants.

I have thus endeavored to bring this question up to the control of first principles. I forget all that we have promised, and all that Georgia has repeatedly conceded, and by her conduct confirmed. Sir, in this abstract presentation of the case, stripped of all collateral circumstances, (and these only the more firmly establish the Indian claims;)—if the contending parties were to exchange positions; place the white man where the Indian stands; load *him* with all these wrongs,—and what path would his outraged feelings strike out for his career? Twenty shillings tax, I think it was, imposed upon the immortal Hampden, roused into activity the slumbering fires of liberty in the old world. Thence she dates a glorious epoch, whose healthful influence still cherishes the spirit of freedom. A few pence of duty on tea, that invaded no fireside, excited no personal fears, disturbed no immediate interest whatever, awakened in the

American colonies a spirit of firm resistance ; and how was the tea tax met, Sir ? Just as it should be. There was lurking, beneath this trifling imposition of duty, a covert assumption of authority, that led directly to oppressive exactions. "No taxation without representation," became our motto. We would neither pay the tax, nor drink the tea. Our fathers buckled on their armor, and, from the water's edge, repelled the encroachments of a misguided cabinet. We successfully and triumphantly contended for the very rights and privileges, that our Indian neighbors now implore us to protect and preserve to them. Sir, this thought invests the subject under debate with most singular and momentous interest. *We*, whom God has exalted to the very summit of prosperity—whose brief career forms the brightest page in history ; the wonder and praise of the world ; Freedom's hope, and her consolation :—*We* about to turn traitors to our principles and our fame—about to become the oppressors of the feeble, and to cast away our birth-right ! Mr. President, I hope for better things.

It is a subject full of grateful satisfaction, that, in our public intercourse with the Indians, ever since the first colonies of white men found an abode on these western shores, we have distinctly recognised their title ; treated with them as the owners ; and, in all our acquisitions of territory, applied ourselves to these ancient proprietors, by purchase and cession alone, to obtain the right of soil. Sir, I challenge the record of any other or different pretension. When or where did the assembly or convention meet, which proclaimed, or even suggested to these tribes, that the right of discovery contained a superior efficacy to all prior titles ?

And our recognition was not confined to the soil merely. We regarded them *as nations*—far behind us, indeed, in civilization ; but still we respected their forms of government—we conformed our conduct to their notions of civil polity. We were aware of the potency of any edict that sprang from the deliberations of the council fire ; and when we desired lands, or peace, or alliances, to this source of power and energy, to this great lever of Indian government, we addressed our proposals. To this alone did we look, and from this alone did we expect aid or relief.

I now proceed, very briefly, to trace our public history in these important relations. As early as 1763, a proclamation was issued by the king of Great Britain to his American colonies and dependencies, which, in clear and decided terms, and with an honorable regard for Indian privileges, declared the opinions of the crown and the duties of its subjects. The preamble to that part of this document which concerns Indian affairs, is couched in terms that cannot be misunderstood. I give a literal extract :

"And whereas it is just and reasonable, and essential to our interest and the security of our colonies, that the *several nations* or tribes of Indians *with whom we are connected, and who live under*

our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories, as, *not having been ceded to or purchased by us*, are reserved to them, or any of them, as their hunting grounds.”——

Therefore the governors of colonies are prohibited, upon any pretence whatever, from granting any warrants of survey, or passing any patents for lands, “upon any lands whatever, which, not having been ceded or purchased, were reserved to the said Indians;” and, by another injunction in the same proclamation, “all persons whatever, who have either wilfully or inadvertently seated themselves upon any lands, which, not having been ceded to or purchased by the crown, were reserved to the Indians as aforesaid, are strictly enjoined and required to remove themselves from such settlements.”

This royal ordinance is an unqualified admission of every principle that is now urged in favor of the liberties and rights of these tribes. It refers to them as nations, that had put themselves under the protection of the crown; and, adverting to the fact that their lands had not *been ceded or purchased*, it freely and justly runs out the inevitable conclusion, that they are reserved to these nations as their property; and forbids all surveys and patents, and warns off all intruders and trespassers. Sir, this contains the epitome of Indian history and title. No king, colony, state or territory, ever made, or attempted to make, a grant or title to the Indians, but universally and perpetually derived their titles *from* them. This one fact, that stands forth broadly on the page of Indian history—which neither kings nor colonies—neither lords proprietors, nor diplomatic agents, have, on any single occasion, disputed—is alone sufficient to demolish the whole system of political pretensions, conjured up in modern times, to drive the poor Indian from the last refuge of his hopes.

The next important era, in the order of time, relates to the dispute of the colonies with Great Britain. The attention of the Congress, on the eve of that conflict, was called to the situation of these tribes, and their dispositions on that interesting subject. Then, Sir, we approached them as independent nations, with the acknowledged power to form alliances with or against us. For, in June, 1775, our Congress resolved, “That the Committee for Indian Affairs do prepare proper talks to the several tribes of Indians, for engaging the *continuance of their friendship to us, and neutrality* in our present unhappy dispute with Great Britain.” Again, on the 12th July, 1775, a report of the Committee was agreed to, with the following clause at its head: “That the securing and preserving *the friendship of the Indian nations*, appears to be a subject of the utmost moment to these colonies.” And, Sir, the journals of that eventful period of our history are full of resolutions, all of which indicate the same opinions of those illustrious statesmen, respecting the unquestioned sovereignty of the Indians. I forbear further details. After the revolution, and in the

eighth year of our Independence, in the month of September, A. D. 1783, the Congress again took up the subject of Indian affairs, and resolved to hold a convention with the Indians residing in the middle and northern States, who had taken up arms against us, for the purposes of "receiving them into the favor and protection of the United States, and of establishing boundary lines of property, for separating and dividing the settlements of the citizens from the Indian villages and hunting grounds, and thereby extinguishing, as far as possible, all occasion for future animosities, disquiet and contention."

If, at any point of our existence as a people, a disposition to encroach upon the Indians, and to break down their separate and sovereign character, could have been looked for, or at all excused, this was the time; when we had just come out of a long, severe and bloody conflict, often prosecuted by our foes with unnatural barbarity, and to aggravate which, these very tribes had employed their savage and ferocious customs. And yet, Sir, what do we find? Instead of the claims of conquest, the rights of war, now so convenient to set up, the American Congress, greatly just, accord to these very Indians the character of foreign nations, and invite them to take shelter under our favor and protection; not only this, but adopt measures 'to ascertain and establish *boundary lines of property between our citizens and their villages and hunting grounds.*'

Under the confederation of the old thirteen States, and shortly before the adoption of the Constitution, on the 28th of November, 1785, a treaty was made with the Cherokee nation at Hopewell. This treaty, according to its title, was concluded between "*Commissioners Plenipotentiary of the United States of America, of the one part, and the Headmen and Warriors of all the Cherokees, of the other.*" It gives "peace to all the Cherokees," and receives them into the favor and protection of the United States. And, by the first article, the Cherokees "agree to restore all the prisoners, *citizens of the United States, or subjects of their allies, to their entire liberty.*" Here, again, we discover the same magnanimous policy of renouncing any pretended rights of a conqueror in our negotiations with the allies of our enemy. We invite them to peace; we engage to become their protectors; and, in the stipulation for the liberation of prisoners, we trace again the broad line of distinction between *citizens* of the United States and the Cherokee people.

Who, after this, Sir, can retain a single doubt as to the unquestioned political sovereignty of these tribes. It is very true, that they were not absolutely independent. As they had become comparatively feeble, and as they were, in the mass, an uncivilized race, they chose to depend upon us for protection; but this did not destroy or affect their sovereignty. The rule of public law is clearly stated by Vattel:—"One community may be bound to another by a very unequal alliance, and still be a sovereign State. Though a weak State, in order to provide for its safety, should place itself under the protection of a more powerful one, yet, if it reserves to itself *the right of govern-*

ing its own body, it ought to be considered as an independent State." If the right of self-government is retained, the State preserves its political existence; and, permit me to ask, when did the southern Indians relinquish this right? Sir, they have always exercised it; and were never disturbed in the enjoyment of it, until the late legislation of Georgia and the States of Alabama and Mississippi.

The treaty next proceeds to establish territorial domains, and to forbid all intrusions upon the Cherokee country, by any of our citizens, on the pains of outlawry. It provides, that if any citizen of the United States shall remain on the lands of the Indians for six months "after the ratification of the treaty, such person shall forfeit the protection of the United States, and the Indians *may punish him or not, as they please.*" What stronger attribute of sovereignty could have been conceded to this tribe, than to have accorded to them the power of punishing our citizens according to their own laws and modes? and, Sir, what more satisfactory proof can be furnished to the Senate, of the sincere and inflexible purpose of our government to maintain the rights of the Indian nations, than the annexation of such sanctions as the forfeiture of national protection, and the infliction upon intruders of any punishment within the range of savage discretion. It is to be recollected, that this treaty was made at a time when all admit the Cherokees to have been, with very rare exceptions, in the rudest state of pagan darkness.

Mr. President, it is really a subject of wonder, that, after these repeated and solemn recognitions of right of soil, territory and jurisdiction, in these aboriginal nations, it should be gravely asserted, that they are mere occupants at our will; and, what is absolutely marvellous, that they are a part of *the Georgia population*—a district of her territory, and amenable to her laws, whenever she chooses to extend them!

After the treaty of Hopewell was made and ratified, and in the year 1787, the States of North Carolina and Georgia transmitted their protests to Congress, in which they complained of the course of transactions adopted with respect to the Indians, and asserted a right in the States to treat with these tribes, and to obtain grants of their lands. The Congress referred the whole matter to a committee of five, who made an elaborate report, that disclosed the principles upon which the intercourse of the confederacy with these people was founded. It is material to a correct understanding of this branch of the subject, that we should advert to a limitation, subsisting at that time, upon the powers of the old Congress. The limitation is contained in the following clause of the articles of confederation:—"Congress shall have the sole and exclusive right and power of regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated."

Upon this clause and its proviso, the committee proceed to report: "In framing this clause, the parties to the federal compact must have had some definite objects in view. The objects that come into view principally in forming treaties, or managing affairs with the Indians, *had been long understood*, and pretty well ascertained, in this country. The committee conceive that it has been long the opinion of the country, *supported by justice and humanity*, that the Indians have *just claims to all lands* occupied by, and *not fairly purchased* from, them." "The laws of the State can have no effect upon a tribe of Indians, or their lands within a State, so long as that tribe is independent, and not a member of the State. It cannot be supposed that the State has the powers mentioned," (those of making war and peace, purchasing lands from them, and fixing boundaries,) "without absurdity in theory and practice. For the Indian tribes are justly considered the *common friends or enemies of the United States*, and *no particular State* can have an exclusive interest in the management of affairs with any of the tribes, except in uncommon cases."

The Senate perceive the estimate that was formed of these State pretensions. The committee argue with conclusive energy, that to yield such powers to particular States, would not only be absurd in theory, but would in fact destroy the whole system of Indian relations—that this divided, alternate cognizance of the matter, by the States and by the Congress, could never be enforced, and would result in discordant and fruitless regulations. The grounds assumed in this able report are unanswerable. The committee regarded the subject as national, concerning the whole United States, of whom the Indians were the common friends or foes—that such a concern was too general and public in all its bearings, to be subjected to the legislation and management of any particular State. The Congress, therefore, assumed the entire jurisdiction and control of it. And after this report, we hear no more of State protests. They yielded their claims to a much safer depositary of this interesting trust. Sir, I take leave to say, that the sound, sensible principles of this report have lost nothing of their authority by time, and that every year of our history has confirmed their wisdom; as well as illustrated the justice and humanity of the Congress of '87.

The Convention that formed and adopted the Constitution, in their deliberations upon the security of Indian rights, wisely determined to place our relations with the tribes under the absolute superintendence of the general government, which they were about to establish. The proviso under the old compact, that had in ambiguous terms reserved to particular States an undefined management of Indian Affairs, was altogether discarded; and the simple, unqualified control of this important branch of public policy, was delegated to Congress, in the following clause of the Constitution: "Congress shall have power to regulate commerce with *foreign nations*, among the *several States*, and *with the Indian tribes*." An incidental argu-

ment, in favor of my views, cannot fail to strike the mind, on the face of this clause. The plea that is now, for the first time, urged against the Indians, rests upon the allegation, that the tribes are not distinct nations—that they compose a portion of the people of the States; and yet, in this great national charter, the work of as much collected wisdom, virtue and patriotism, as ever adorned the annals, or shed light upon the government of any age or country, the Indian tribes are associated with foreign nations and the several States, as one of *the three distinct* departments of the human family, with which the general government was to regulate commerce. Strange company, truly, in which to find those it now seems convenient to denominate a few poor, miserable savages, that were always the peculiar subjects of State sovereignty, mere tenants at will of the soil, and with whom it is “idle” to speak of negotiating treaties!

There was another subject, closely connected with this, that engaged the anxious deliberations of the great statesmen who composed the memorable Convention;—and this was the treaty power. To found this well, was a concern worthy of their first and best thoughts. The good faith of a nation was not to be pledged but on grave and great occasions: for when plighted, it brought the nation itself under obligations too sacred to be argued away by the suggestions of policy or convenience, profit or loss. They, therefore, subjected the exercise of this high function to two great departments of the government—the President and Senate of the United States. They required formalities to attend the exercise of the power, that were intended and calculated to guard the trust from rash and inconsiderate administration. But, these requisites complied with, and a treaty made and concluded, no retreat from its claims was provided or desired by the Convention. No, Sir. To shut up every avenue of escape—to compel us to be faithful, “Treaties” are declared, by the charter of our government, “*to be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding.*” How could the inviolate character of a treaty be more effectually preserved? Let convulsions agitate the commonwealth—let the strifes of party shake the pillars of the political edifice—around the nation’s faith barriers are raised, that may smile at the storm. And, Sir, if these guards fail; if these defences can be assailed and broken down; then may we indeed despair. Truth and honor have no citadel on earth—their sanctions are despised and forgotten; and the law of the strongest prevails.

Mr. President, I fear that I shall oppress the patience of the Senate by these details—but the subject is deeply interesting, and each successive year of our political history brings me fresh and strong proofs of the sacred estimation, in which Indian rights were always held. Sir, in the very next year that followed the formation of the Constitution, on the first of September, 1788, the encroachments of the whites upon the Indian territory, as guarantied to them by the treaty of Hopewell,

made with the Cherokees, as I have already stated, in 1785, caused a proclamation to be issued by Congress, of the date first mentioned, affirming in all things the treaty of Hopewell, and distinctly announcing, (I give the literal clause,) "*the firm determination of Congress to protect the said Cherokees in their rights,*" according to the true intent and meaning of the said treaty." And they further resolve, "that the Secretary of War be directed to have a sufficient number of the troops in the service of the United States, in readiness to march from the Ohio, to the protection of the Cherokees, whenever Congress shall direct the same."

The next important event, in connexion with the Cherokees, is the treaty of Holston, made with them on the 2d July, 1791. This was the first treaty that was negotiated with the Cherokees after the adoption of the Constitution. And it is only necessary to consider the import of its preamble to become satisfied of the constancy of our policy, in adhering to the first principles of our Indian negotiations. Sir, let it be remembered that this was a crisis, when the true spirit of the Constitution would be best understood. Most of those who framed it came into the councils of the country in 1789. Let it be well pondered, that this treaty of Holston was the public compact, in which general Washington, as a preparative solemnity, asked the advice of the Senate—and concerning which he inquired of that venerable body, whether, in the treaty to be made, the United States should solemnly guaranty the new boundary, to be ascertained and fixed between them and the Cherokees.

The preamble to this treaty I will now recite :

"The parties being desirous of establishing permanent peace and friendship between the United States and the said Cherokee nation and the citizens and members thereof, and to remove the causes of war, by ascertaining their limits, and making other necessary, just and friendly arrangements : the President of the United States, by William Blount, Governor of the territory of the United States of America south of the river Ohio, and Superintendent of Indian Affairs for the Southern District, *who is vested with full powers for these purposes, by and with the advice and consent of the Senate of the United States* ; and the Cherokee nation, by the undersigned Chiefs and Warriors representing the said nation, have agreed to the following articles," &c.

The first article stipulates, that there shall be *perpetual peace and friendship* between the parties. A subsequent article provides, that the boundary between the United States and the Cherokees "shall be ascertained and marked plainly, by three persons appointed on the part of the United States, and three Cherokees on the part of their nation."

In pursuance of the advice of the Senate, by the 7th article of this treaty, "The United States *solemnly guaranty* to the Cherokee nation *all their lands not hereby ceded.*"

And after several material clauses, the concluding article suspends the effect and obligation of the treaty upon its *ratifi-*

cation "by the President of the United States, with the advice and consent of the Senate of the United States."

Now, Sir, it is a most striking part of this history, that every possible incident of form, deliberation, advisement and power, attended this compact. The Senate was consulted before our plenipotentiary was commissioned—full powers were then given to our commissioner—the articles were agreed upon—the treaty referred to the Executive and Senate for their ratification, and, with all its provisions, by them solemnly confirmed.

Mr. President, it requires a fulness of *self-respect* and self-confidence, the lot of a rare few, after time has added its sanctions to this high pledge of national honor, to attempt to convict the illustrious men of that Senate of gross ignorance of constitutional power; to charge against them that they strangely mistook the charter under which they acted; and violated almost the proprieties of language, as some gentlemen contend, by dignifying with the name and formalities of a treaty "*mere bargains to get Indian lands.*" Who so well understood the nature and extent of the powers granted in the Constitution, as the statesmen who aided by their personal counsels to establish it?

Every administration of this government has, with like solemnities and stipulations, held treaties with the Cherokees; treaties, too, by almost all of which we obtained further accessions of territory. Yes, Sir, whenever we approached them in the language of friendship and kindness, we touched the chord that won their confidence: and now, when they have nothing left, with which to satisfy our cravings, we propose to annul every treaty—to gainsay our word—and, by violence and perfidy, drive the Indian from his home. In a subsequent treaty between the United States and the Cherokee nation, concluded on the 8th July, A. D. 1817, express reference is made to past negotiations between the parties on the subject of removal to the west of the Mississippi; the same question that now agitates the country, and engages our deliberations. And this convention is deserving of particular notice, inasmuch as we shall learn from it, not only what sentiments were then entertained by our government towards the Cherokees, but also in what light the different dispositions of the Indians to emigrate to the west, and to remain on their ancient patrimony, were considered. This treaty recites, that application had been made to the United States, at a previous period, by a deputation of the Cherokees, [on the 9th January, 1809,] by which they apprized the government of the wish of a part of their nation to remove west of the Mississippi, and of the residue to abide in their old habitations; that the President of the United States, after maturely considering the subject, answered the petition as follows: "The United States, *my children*, are the friends of both parties, and, as far as can be reasonably asked, they are willing to satisfy the wishes of both. *Those who remain* may be assured of our *patronage, our aid, and our*

good neighborhood." "To those who remove, every aid shall be administered, and when established at their new settlements, we shall still consider *them as our children, and always hold them firmly by the hand.*" The convention then establishes new boundaries, and pledges our faith to respect and defend the Indian territories. Some matters, Mr. President, by universal consent, are taken as granted, without any explicit recognition. Under the influence of this rule of common fairness, how can we ever dispute the sovereign right of the Cherokees to remain east of the Mississippi, when it was in relation to that very location, that we promised our patronage, aid and good neighborhood? Sir, is this high-handed encroachment of Georgia to be the commentary upon the national pledge here given, and the obvious import of these terms? How were these people to remain, if not as they then existed, and as we then acknowledged them to be, a distinct and separate community, governed by their own peculiar laws and customs?

Further, Sir, it appears from this treaty, that the Indians who preferred to remain east of the river, expressed "to the President an anxious desire to engage *in the pursuits of agriculture and civilized life in the country they then occupied,*" and we engaged to encourage those laudable purposes. Indeed, such pursuits had been recommended to the tribes, and patronized by the United States, for many years before this convention. Mr. Jefferson, in his message to Congress, as early as 1805, and when on the subject of our Indian relations, with his usual enlarged views of public policy, observes; "The aboriginal inhabitants of these countries, I have regarded with the commiseration their history inspires. Endowed with the faculties and the *rights of men*, breathing an ardent love of *liberty and independence*, and occupying a country which left them *no desire but to be undisturbed*, the stream of overflowing population from other regions directed itself on these shores. Without power to divert, or habits to contend against it, they have been *overwhelmed by the current or driven before it*. Now reduced within limits too narrow for the hunter state, humanity enjoins us to teach them agriculture and the domestic arts; to encourage them to that industry, which alone can enable them to maintain their place in existence; and to prepare them in time for that society, which, to bodily comforts, adds the improvement of the mind and morals. We have, therefore, liberally furnished them with the implements of husbandry and household use; we have placed among them instructors in the arts of first necessity; and they are *covered with the ægis of the law against aggressors from among ourselves.*" These, Sir, are sentiments worthy of an illustrious statesman. None can fail to perceive the spirit of justice and humanity which Mr. Jefferson cherished towards our Indian allies. He was, through his whole life, the firm, unshrinking advocate of their rights, a patron of all their plans for moral improvement and elevation.

Mr. President, it will not be necessary to pursue the details of our treaty negotiations further. I beg leave to state, before

I leave them, however, that with all the southwestern tribes of Indians we have similar treaties. Not only the Cherokees, but the Creeks, Choctaws and Chickasaws, in the neighborhood of Georgia, Tennessee, Alabama and Mississippi, hold our faith, repeatedly pledged to them, that we would respect their boundaries, repel aggressions, and protect and nourish them as our neighbors and friends: and to all these public and sacred compacts, Georgia was a constant party. They were required, by an express article, to be submitted to the Senate of the United States for their advice and consent. They were so submitted; and Georgia, by her able representatives in the Senate, united in the ratification of these same treaties, without, in any single instance, raising an exception, or interposing a constitutional difficulty or scruple.

Other branches of our political history shed abundant light upon this momentous question. When the Congress of the United States directed its care to the future settlement and government of the vast and noble domains to the northwest of the river Ohio, ceded by the State of Virginia, among other matters, which were deemed to be vitally connected with the welfare of that region, was the condition of the Indian nations. The third article of the celebrated ordinance for the government of the Northwestern Territory, is in the following words:

“Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The *utmost good faith* shall always be observed towards the Indians; their *lands and property* shall never be taken from them *without their consent*; and, in their *property, rights and liberty*, they never shall *be invaded or disturbed*, unless in *just and lawful wars, authorized by Congress*; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.”

Sir, the more minutely we look into the proceedings of the Congress of 1787, the more deeply shall we venerate the wisdom and virtue, the largeness of views, and the political forecast, that blessed and illustrated the councils of our country. This solitary article would forever stand out, and alone sustain their reputation. We shall presently learn what concern was manifested by the State of Georgia, to spread the whole influence and control of this article over the cession, which she made to the Union, of the territory now composing the States of Alabama and Mississippi.

How can Georgia, after all this, desire or attempt, and how can we quietly permit her, “to invade and disturb the property, rights and liberty of the Indians?” And this, not only *not* “in just and lawful wars authorized by Congress,” but in a time of profound peace, while the Cherokee lives in tranquil prosperity by her side? I press the inquiry—How can we tamely suffer these States to make laws, not only not “founded in justice and humanity,” “for preventing wrongs being done to the Indians,” but for the avowed purpose of inflicting the gross

and wanton injustice of breaking up their governments—of arrogating their long-cherished customs, and of annihilating their existence as a distinct people.

The Congress of the United States, in 1790, in an act to regulate trade and intercourse with the Indian tribes; and again, by a similar act in 1802, still in force, distinctly recognised every material stipulation contained in the numerous treaties with the Indians. In fact, Sir, these acts of legislation were passed expressly to fulfil our treaty stipulations.

These statutes refer to "*the boundaries, as established by treaties between the United States and the various Indian tribes;*" they next direct such "*lines to be clearly ascertained, and distinctly marked*"—prohibit any citizen of the United States from crossing these lines, to hunt or settle—and authorize the employment of the public and *military force* of the government to prevent intrusion, and to expel trespassers upon Indian lands. The twelfth section of this important law most wisely guards the great object of Indian title from all public and private imposition, by enacting, "*that no purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity in law or equity, unless the same be made by treaty or convention, entered into pursuant to the Constitution.*"

I trust, Sir, that this brief exposition of our policy, in relation to Indian affairs, establishes, beyond all controversy, the obligation of the United States to protect these tribes in the exercise and enjoyment of their civil and political rights. Sir, the question has ceased to be—*What are our duties?* An inquiry much more embarrassing is forced upon us: How shall we most plausibly, and with the least possible *violence, break our faith?* Sir, we repel the inquiry—we reject such an issue—and point the guardians of public honor to the broad, plain path of faithful performance, to which they are equally urged by duty and by interest.

Here I might properly rest—as the United States are the only party that the Indians are bound to regard. But if further proofs be wanting to convince us of the unwarrantable pretensions of Georgia, in her late violent legislation, they are at hand, cogent, clear and overwhelming. This State, Sir, was not only a party to all these conventions with the general government; she made as solemn treaties with the Creeks and Cherokees for herself, both when a colony, and after she became a State. These form a part of her title—and are bound up with her public laws. On the first of June, A. D. 1773, she negotiated a treaty with these Indian nations, by the joint agency of the governor of the colony and the superintendent of Indian affairs; in which treaty, boundaries are established and cessions of land agreed upon. Again, on the 31st May, A. D. 1783, after her independence as a State, another treaty was concluded between the governor of Georgia and five of her most distinguished citizens, duly appointed by the legisla-

ture of the State, of the one part, and the chiefs, head men and warriors of the hordes or tribes of the Cherokee Indians, "*in behalf of the said nation*," on the other part." And in the first article of this convention, the distinct, independent existence of the Cherokees is acknowledged; for it provides, "that all differences between the said parties, heretofore subsisting, shall cease and be forgotten." Is it possible to contend, in the face of this document, that the Cherokees are under the jurisdiction of Georgia, when that State finds it necessary to negotiate for peace with them by all the forms of a regular treaty? But more than this—by the last article of this treaty, the Cherokees agree to cede, grant, release and quitclaim to Georgia, all the lands *up to a certain boundary line* defined in the said document: And until since the extraordinary usurpation of this State, in extending her laws over this nation, these treaty lines were respected, and never disputed.

In the year 1777, the States of Georgia and South Carolina met the Creek and Cherokee nations at Dewitt's Corner, for the avowed purpose of making a treaty of peace with them. Sir, if the greatest potentate of Europe had been a party, the preliminaries could not have been more formal or solemn. First are produced what are denominated "the Georgia full powers" delegated to her commissioners, to meet "the Indian Congress" to be held at Dewitt's Corner. Next appear "the South Carolina full powers," for the like purpose—and lastly, the Creek and Cherokee "full powers." These powers are opened and exchanged at this Congress, and a treaty is agreed upon by the plenipotentiaries, establishing peace, and future boundaries between their respective territories.

In many of the treaties made by the United States with the Cherokees and Creeks, large tracts of land were relinquished to us, which, by our compact with the State of Georgia, we received for her use. She never questioned, at those times, our right to treat for those lands, nor the right of the Indians to grant them; but gladly availed herself of such rich accessions to her domains, and proceeded very promptly to distribute them amongst her citizens. Now, it is a fundamental maxim in all codes of law, which acknowledge the obligations of equity and good conscience, that if a party is silent when these old-fashioned rules of upright dealing require him to speak, he shall forever thereafter hold his peace. The application of this sound and wholesome rule will instantly strike the moral apprehensions of every member of the Senate.

I am indebted to the State of Georgia for a clear and very satisfactory exposition of the nature of Indian treaties, and the obligations that arise from them. It is an authority for positions, which I have had the honor to maintain, of the greater weight, as it proceeds from the highest functionary of her government.* In February, 1825, the Creeks, by a treaty made with the United States, ceded all their lands to us within the geo-

* George M. Troup, now a member of the Senate of the U. S.

graphical limits of Georgia, for the use of that State. By an article in the treaty, it was provided that the United States should protect the Indians against the encroachments and impositions of the whites, until the removal of the Indians should have been accomplished, according to the terms of the treaty. The governor of Georgia, on the 22d day of March, of the same year, issued his proclamation, in which, after stating the conclusion of the treaty already mentioned, and the article in it for the protection of the Creeks, he proceeds :

"I have, therefore, thought proper to issue this, my proclamation, warning all persons, citizens of Georgia or others, against trespassing or intruding upon lands occupied by the Indians within the limits of this State, either for the purpose of settlement or otherwise, as every such act will be *in direct violation* of the provisions of the treaty aforesaid, and will expose the aggressors to the most certain and summary punishment by the authorities of the State, and of the United States. All good citizens, therefore, pursuing the dictates of *good faith*, will unite in enforcing the *obligations of the treaty as the supreme law*," &c.

The Senate perceive that this executive injunction finds its requirements, explicitly, upon the *faith* and authority of the treaty, as the *supreme law* ; and this a treaty made with *Indians*. Yes, Sir, a treaty with a part of the very Indians now asserted by Georgia to be below the reach of treaties—poor abjects ! with whom it is declared to be ridiculous and idle to speak of treating !

Sir, she cannot recall her proclamation. Give these sacred doctrines their full operation here ; let their influence prevail in the eventful issue now opened for our decision ; and the Indians, who are involved in it, will be satisfied. They have approached us with no other plea ; they urge no other or higher considerations. They point us to the faith of treaties, and implore us, by the constitutional obligation of these national compacts, to raise around our ancient allies the effectual defences, which we have so often promised. Carry out these rules of public duty, and the Cherokee delegation, who have been waiting at your doors with anxious interest, will return to their home relieved from the burden that now sinks their spirits, and with the grateful conviction that the successors of Washington are still true to his memory.

Mr. President : What could have wrought this entire revolution in opinions ? and in three short years ? Our relations with the Indians have not changed. Condition and circumstance, claim and obligation, remain precisely the same. And yet, now, we hear that these Indians have been all the time, since Georgia had existence, a component part of her population ; within the full scope of her jurisdiction and sovereignty, and subject to the control of her laws.

The people of this country will never acquiesce in such violent constructions. They will read for themselves ; and when they shall learn the history of all our intercourse with these nations ; when they shall perceive the guaranties so often re-

newed to them, and under what solemn sanctions, the American community will not seek the aids of artificial speculations on the requisite formalities to a technical treaty. No, Sir. I repeat it: *They will judge for themselves*, and proclaim, in language that the remotest limit of this Republic will understand—"Call these sacred pledges of a nation's faith by what name you please—*our word has been given, and we should live and die by our word.*"

If the State of Georgia is concluded, and morally bound to stay her hand from invading the lands or the government of the Indians, the States of Mississippi and Alabama are equally and more strongly obliged. They came into the Union after most of the treaties had been made; the former in 1816, and the latter in 1819. These obligations were liens upon the confederacy, and they must take the benefits with the burdens of the Union. They cannot complain of concealment or surprise. These conventions were all public and notorious; and the Indians under their daily view, in actual separate possession, exercising the rights of sovereignty and property.

Moreover, we have heard much of *constitutional* powers and disabilities in this debate. Sir, I proceed to demonstrate that both Mississippi and Alabama are, by a fundamental inhibition in the constitution of their government, prevented from extending their laws over the Indians.—When Georgia, in 1802, granted to the United States the territory that composes nearly the whole of these two States, she made it an express condition of the cession, that the States to be formed of it should conform to all the articles of "the ordinance for the government of the territory northwest of the Ohio," excepting one single article prohibiting involuntary servitude. When these States applied to the general government to be formed into Territories, this condition of the Georgia cession was remembered by all parties. Mississippi and Alabama, in the most deliberate manner, agreed to the condition, and assumed the articles of the ordinance as an integral part of their political constitution. When they afterwards proposed to us to be received into the Federal Union, acts of Congress were duly passed, authorizing them respectively to form a constitution and State government for the people within their territories, with this proviso—"That the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of the 13th July, A. D. 1787;" and they were afterwards, upon duly certifying to Congress that they had conformed to those principles, and engrafted them into their constitution, admitted into the Republic. The third article of this ordinance I have already read and considered, and will only add, that human wisdom and skill could not have devised a more effectual safeguard for the Indian tribes, than is now incorporated into the laws and constitution of the States of Mississippi and Alabama.

It would have been well in these States to have reviewed their own origin; to have examined the sources of their power, before they rashly, and in disregard of principles that are es-

essential to their political existence, usurped dominion over a community of men as perfectly independent of them as they are of Mexico. And shall we, Sir, quietly submit to the breach of conditions, that we tendered as the indispensable terms of their admission; that were fairly propounded, and freely and fully accepted? Why, Sir, it appears to me, that the fulfilment of solemn contracts, the good faith of public treaties, the fundamental provisions of State constitutions, are to be regarded as matters of very trifling obligation, when they are all to be broken through to reach a feeble and unoffending ally. With a man of truth and honesty, such high considerations as address us, would supersede the occasion for argument; and how can *we* evade them without deep dishonor?

I have complained of the legislation of Georgia. I will now refer the Senate to the law of that State passed on the 19th December, A. D. 1829, that the complaint may be justified. The title of the law would suffice for such purpose, without looking further. After stating its object of *adding* the territory in the *occupancy* of the Cherokee nation of Indians to the adjacent counties of Georgia, another distinct office of this oppressive edict of arbitrary power is avowed to be, "*to annul all laws and ordinances made by the Cherokee nation of Indians.*" And, Sir, the act *does* annul them effectually. For the seventh section enacts, "that after the first day of June next, all laws, ordinances, orders and regulations, *of any kind whatever*, made, passed, or enacted by the Cherokee Indians, either in general Council, or in any other way *whatever*, or by any authority *whatever*, of said tribe, be, and the same are hereby declared to be null and void, and of no effect, as if the same *had never existed.*" Sir, here we find a whole people outlawed—laws, customs, rules, government, all, by one short clause, abrogated, and declared to be void, as if they never had been. History furnishes no example of such high-handed usurpation. The dismemberment and partition of Poland was a deed of humane legislation, compared with this. The succeeding clauses are no less offensive. They provide, that "if any person shall prevent, by threats, menaces, *or other means, or endeavor* to prevent any Indian of said nation, from emigrating, or enrolling as an emigrant, he shall be liable to indictment and confinement in the common gaol, or at hard labor in the penitentiary, not exceeding *four years*, at the discretion of the court;" and "if any person shall *deter, or offer to deter* any Indian, head man, chief or warrior of said nation, from selling or ceding to the United States, *for the use of Georgia*, the whole or any part of said territory, or prevent, or offer to prevent, any such persons from meeting in council or *treaty* any commissioner or commissioners on the part of the United States, *for any purpose whatever*, he shall be guilty of a high misdemeanor, and liable, on conviction, to confinement at *hard labor* in the penitentiary for not less than *four*, nor longer than six years, at the discretion of the court." It is a crime in Georgia for a man to prevent the sale

of his country—a crime to warn a chief or head man, that the agents of the United States are instructed “to move upon him in the line of his prejudices,” that they are coming to bribe him to meet in *treaty* with the commissioner. By the way, Sir, it seems these *treaties* are *very* lawful, when made *for the use of Georgia*.

It is not surprising that our agents advertised the War Department, that if the general government refused to interfere, and the Indians were left to the law of the States, they would soon exchange their lands, and remove. To compel, by harsh and cruel penalties, such exchange, is the broad purpose of this act of Georgia, and nothing is wanting to fill up the picture of a disgraceful system, but to permit the bill before us to pass, without amendment or proviso. Then it will all *seem* fair on our statute books. It legislates for none but those who *may choose* to remove—while we know that grinding, heart-breaking exactions are set in operation elsewhere to drive them to *such a choice*. By the modification I have submitted, I beg for the Indian the poor privilege of a free exercise of his own will.

But the law of Georgia is not yet satisfied. The last section declares, “that no Indian, or descendant of any Indian, residing within the Creek or Cherokee nations of Indians, shall be deemed a competent witness in any court of this State, to *which a white person may be a party*, except such white person resides within the said nation.” It did not suffice to rob these people of the last vestige of their own political rights and liberties. The work was not complete, until they were shut out of the protection of Georgia laws. For, Sir, after the first day of June next, a gang of lawless white men may break into the Cherokee country, plunder their inhabitants, murder the mother with the children, and all in sight of the wretched husband and father—and no law of Georgia will reach the atrocity. It is vain to tell us, Sir, that murder may be traced by circumstantial probabilities. The charge against this State is—You have by force and violence stripped these people of the protection of *their* government, and now refuse to cast over them the shield of your own. The outrage of the deed is, that you leave the poor Indian helpless and defenceless, and in this cruel way hope to banish him from his home. Sir, if this law be enforced, I do religiously believe, that it will awaken tones of feeling that will go up to God—and call down the thunders of his wrath.

The *end*, however, is to justify the means. “The removal of the Indian tribes to the west of the Mississippi is demanded by the dictates of humanity.” This is a word of conciliating import. But it often makes its way to the heart under very doubtful titles; and its present claims deserve to be rigidly questioned. Who urges this plea? They who covet the Indian lands—who wish to rid themselves of a neighbor that they despise, and whose State pride is enlisted in rounding off their territories. But another matter is worthy of a serious thought. Is there such a clause in our covenants with the Indian, that, when we shall deem it best for him, on the whole, we may

break our engagements, and leave him to his persecutors? Notwithstanding our adversaries are not entitled to the use of such humane suggestions, yet we do not shrink from an investigation of this pretence. It will be found as void of support in fact, as the other assumptions are of principle.

It is alleged, that the Indians cannot flourish in the neighborhood of a white population—that whole tribes have disappeared under the influence of this propinquity. As an abstract proposition, it implies reproach somewhere. Our virtues certainly have not such deadly and depopulating power. It must, then, be our vices that possess these destructive energies—and shall we commit injustice, and put in, as our plea for it, that our intercourse with the Indians has been so demoralizing that we must drive them from it, to save them? True, Sir, many tribes have melted away—they have sunk lower and lower—and what people could rise from a condition to which policy, selfishness, and cupidity, conspired to depress them?

Sir, had we devoted the same care to elevate their moral condition, that we have to degrade them, the removal of the Indians would not now seek for an apology in the suggestions of humanity. But I ask, as to the matter of fact, how stands the account? Wherever a fair experiment has been made, the Indians have readily yielded to the influences of moral cultivation. Yes, Sir, they flourish under this culture, and rise in the scale of being. They have shown themselves to be highly susceptible of improvement, and the ferocious feelings and habits of the savage are soothed and reformed by the mild charities of religion. They can very soon be taught to understand and appreciate the blessings of civilization and regular government. And I have the opinions of some of our most enlightened statesmen to sustain me. Mr. Jefferson, nearly thirty years ago, congratulates his fellow-citizens upon the hopeful indications furnished by the laudable efforts of the government to meliorate the condition of those, whom he was pleased to denominate "our Indian neighbors." In his message to Congress on the 8th of December, 1801, he says; "Among our Indian neighbors, also, a spirit of peace and friendship generally prevails; and I am happy to inform you that the continued efforts to introduce among them the implements and the practice of husbandry, and of the household arts, have not been without success. They are becoming more and more sensible of the superiority of this dependence for clothing and subsistence over the precarious resources of hunting and fishing. And already are we able to announce that, instead of that constant diminution of numbers produced by their wars and their wants, some of *them begin to experience an increase of population.*"

Upon the authority of this great statesman, I can direct our government to a much more effectual, as well as more just and honorable remedy for the evils that afflict these tribes, than their proposed removal into the wild, uncultivated regions of the western forests. In a message to Congress on the 17th October, 1803, Mr. Jefferson remarks; "With many of the

other Indian tribes, improvements in agriculture and household manufacture are advancing; and with all, our peace and friendship are established, on grounds much firmer than heretofore." In his message of the 2d December, 1806, there is a paragraph devoted to this subject deserving of our most respectful consideration. The friends of Indian rights could not desire the aid of better sentiments than Mr. Jefferson inculcated, in that part of the message where he says;

"We continue to receive proofs of the growing attachment of our Indian neighbors; and of their disposition to place all their interests under the patronage of the United States. These dispositions are inspired by *their confidence in our justice*, and in the sincere concern we feel for their welfare. And as long as we discharge these high and honorable functions with the integrity and good faith which alone can entitle us to their continuance, we may expect to reap the just reward in their peace and friendship."

Again, in November, 1808, he informs the Congress that

"With our Indian neighbors the public peace has been steadily maintained; and generally, from a conviction that we consider them as a part of ourselves, and cherish with sincerity their rights and interests, the attachment of the Indian tribes is gaining strength daily, is extending from the nearer to the more remote, and will amply requite us for the justice and friendship practised towards them. Husbandry and household manufacture are advancing among them—more rapidly with the southern than northern tribes, from circumstances of soil and climate."

Mr. Madison, in his message of November, 1809, likewise bears his public testimony to the gradual improvement of the Indians. "With our Indian neighbors," he remarks, "the just and benevolent system continued toward them, has also preserved peace, and is *more and more advancing habits favorable to their civilization and happiness.*"

I will detain the Senate with but one more testimonial, from another venerable Chief Magistrate. Mr. Monroe, as lately as 1824, in his message, with great satisfaction informed the Congress that the Indians were "making steady advances in civilization and the improvement of their condition."

"Many of the tribes," he continues, "have already *made great progress* in the arts of civilized life. This desirable result has been brought about by the humane and persevering policy of the government, and particularly by means of the appropriation for the civilization of the Indians. There have been established, under the provisions of this act, thirty-two schools, containing nine hundred and sixteen scholars, who are well instructed in several branches of literature, and likewise in agriculture and the ordinary arts of life."

Now, Sir, when we consider the large space which these illustrious men have filled in our councils, and the perfect confidence that is due to their official statements, is it not astonishing to hear it gravely maintained that the Indians are retrograding in their condition and character; that all our public anxieties and cares bestowed upon them have been utterly

fruitless ; and that, for very pity's sake, we must get rid of them, or they will perish on our hands? Sir, I believe that the confidence of the Senate has been abused by some of the letter-writers, who give us such sad accounts of Indian wretchedness. I rejoice that we may safely repose upon the statements contained in the letters of Messrs. J. L. Allen, R. M. Livingston, Rev. Cyrus Kingsbury, and the Rev. Samuel A. Worcester. The character of these witnesses is without reproach ; and their satisfactory certificates of the improvement of the tribes continue and confirm the history furnished to us in the several messages from which I have just read extracts.

It is further maintained, "that one of the greatest evils to which the Indians are exposed, is that incessant pressure of population, that forces them from seat to seat, without allowing time for moral and intellectual improvement." Sir, this is the very reason—the deep, cogent reason—which I present to the Senate, now to raise the barrier against the pressure of population, and, with all the authority of this nation, say to the urging tide, "Thus far, and no farther." Let us save them now, or we never shall. For is it not clear as the sunbeam, Sir, that a removal will aggravate their woes? If the tide is nearly irresistible at this time ; when a few more years shall fill the regions beyond the Arkansas with many more millions of enterprising white men, will not an increased impulse be given, that shall sweep the red men away into the barren prairies, or the Pacific of the west?

If these constant removals are so afflictive, and allow no time for moral improvement ; if this be the cause why the attempts at Indian reformation are alleged to have been so unavailing ; do not the dictates of experience, then, plead most powerfully with us, to drive them no farther?—to grant them an abiding place, where these moral causes may have a fair and uninterrupted operation in moulding and refining the Indian character? And, Sir, weigh a moment the considerations that address us on behalf of the Cherokees especially. Prompted and encouraged by our counsels, they have in good earnest resolved to become men, rational, educated, Christian men ; and they have succeeded beyond our most sanguine hopes. They have established a regular constitution of civil government, republican in its principles. Wise and beneficent laws are enacted. The people acknowledge their authority, and feel their obligation. A printing press, conducted by one of the nation, circulates a weekly newspaper, printed partly in English, and partly in the Cherokee language. Schools flourish in many of their settlements. Christian temples, to the God of the Bible, are frequented by respectful, devout, and many sincere worshippers. God, as we believe, has many people among them, whom he regards as the "apple of his eye." They have become better neighbors to Georgia. She made no complaints during the lapse of fifty years, when the tribes were a horde of ruthless, licentious and drunken savages ; when no law con-

trolled them; when the only judge was their will, and their avenger the tomahawk.

Then Georgia could make treaties with them, and acknowledge them as nations; and in conventions trace boundary lines, and respect the land-marks of her neighbor: and now, when they begin to reap the fruits of all the paternal instructions, so repeatedly and earnestly delivered to them by the Presidents; when the Cherokee has learned to respect the rights of the white man, and sacredly to regard the obligations of truth and conscience; is this the time, Sir, to break up a peaceful community, to put out its council fires, to annul its laws and customs, to crush the rising hopes of its youth, and to drive the desponding and discouraged Indian to despair? Although it be called a sickly humanity to sympathize with Indians—every freeman in the land, that has one spark of the spirit of his fathers, will denounce the proposed measure as an unparalleled stretch of cruel injustice—unparalleled certainly in our history. And if the deed be done, Sir, how it is regarded in heaven will, sooner or later, be known on earth; for this is the judgment place of public sins. And all these ties are to be broken asunder, for a State that was silent, and acquiesced in the relations of the Indians to our present government; that pretended to no right of direct interference, whilst these tribes were really dangerous; when their ferocious incursions justly disturbed the tranquillity of the fireside, and waked the “sleep of the cradle;”—for a State that seeks it now against an unoffending neighbor, which implores, by all that is dear in the graves of her fathers, in the traditions of by-gone ages; that beseeches by the ties of nature, of home, and of country, to let her live unmolested, and die near the dust of her kindred!

Our fears have been addressed in behalf of those States, whose legislation we resist: and it is inquired with solicitude, Would you urge us to arms with Georgia? No, Sir. This tremendous alternative will not be necessary. Let the general government come out, as it should, with decided and temperate firmness, and officially announce to Georgia, and the other States, that if the Indian tribes choose to remain, they will be protected against all interference and encroachment; and such is my confidence in the sense of justice, in the respect for law, prevailing in the great body of this portion of our fellow-citizens, that I believe they would submit to the authority of the nation. I can expect no other issue. But if the general government be urged to the crisis, never to be anticipated, of appealing to the last resort of her powers; and, when reason, argument and persuasion fail, to raise her strong arm to repress the violations of the supreme law of the land, I ask, is it not in her bond, Sir? Is her guaranty a rope of sand? This effective weapon, the sword in the hands of our national government, has often been employed to chastise the poor Indians; sometimes with dreadful vengeance, I fear; and shall not their protection avail to draw it from the scabbard? Permit me to

refer the Senate to the views of Mr. Jefferson, directly connected with this delicate, yet sacred duty of protection. In 1791, when he was Secretary of State, there were some symptoms of collision on the Indian subject. These produced the letter from him to general Knox, then our Secretary of War, a part of which I will read :

"I am of opinion, that government *should firmly maintain this ground* : that the Indians have a right to the *occupation of their lands, independent of the States within whose chartered limits they happen to be* ; that, until they cede them *by treaty*, or other transaction equivalent to a treaty, no act of a State can give a right to such lands ; that, neither under the present Constitution, nor the ancient confederation, had any State or persons a right to treat with the Indians, without the consent of the general government ; that that consent has never been given by any treaty for the cession of the lands in question ; that the government is determined to exert all *its energy* for the patronage and protection of the rights of the Indians, and the preservation of peace between the United States and them ; and that, if any settlements are made on lands not *ceded by them*, without the previous consent of the United States, the government will think itself bound, not only to declare to the Indians that such settlements are without the authority or protection of the United States, but to *remove them also by public force.*"

Mr. Jefferson seems to have been disturbed by no morbid sensibilities. He speaks out as became a determined statesman. We can trace in this document the same spirit which shed its influence on a more eventful paper—the Declaration of our rights, and of our purpose to maintain and defend them. He looked right onward, in the broad path of public duty ; and if, in his way, he met the terrors of State collision and conflict, he was in no degree intimidated. The faith of treaties was his guide ; and he would not flinch in his purposes, nor surrender the Indians to State encroachments. Let such decided policy go forth in the majesty of our laws now, and Georgia will yield. She will never encounter the responsibilities or the horrors of a civil war. But if she should, no stains of blood will be on our skirts—on herself the guilt will abide forever.

Mr. President : If we abandon these aboriginal proprietors of our soil—these early allies and adopted children of our forefathers—how shall we justify it to our country ? to all the glory of the past, and the promise of the future ? Her *good name* is worth all else besides that contributes to her greatness. And, as I regard this crisis in her history, the time has come when this unbought treasure shall be plucked from dishonor, or abandoned to reproach.

How shall we justify this trespass to ourselves ? Sir, we may deride it, and laugh it to scorn now ; but the occasion will meet every man, when he *must* look inward, and make honest inquiry there. Let us beware how, by oppressive encroachments upon the sacred privileges of our Indian neighbors, we minister to the agonies of future remorse.

I have, in my humble measure, attempted to discharge a public and most solemn duty towards an interesting portion of my fellow men. Should it prove to have been as fruitless as I know it to be below the weight of their claims, yet, even then, Sir, it will have its consolations. Defeat in such a cause is far above the triumphs of unrighteous power. And, in the language of an eloquent writer—"I had rather receive the blessing of one poor Cherokee, as he casts his last look back upon his country, for having, though in vain, attempted to prevent his banishment, than to sleep beneath the marble of all the Cæsars."

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